a statute in so far as it requires a coal-mining corporation, where coal is mined and paid for by weight, to weigh the coal before screening, is not unconstitutional, as restricting the rights of corporations to contract.

The power to legislate, founded upon such a reservation in a charter, is not without limit, but is restricted by rights legitimately acquired by virtue of such charter. *Lothrop v. Steadman*, 42 Conn. 490; Fed. Cas. No. 8514; *Miller v. New York*, 15 Wall. 498; 21 L. Ed. 104; *Sheilds v. Ohio*, 95 U. S. 319, 324; 24 L. Ed. 357, 359; *Sinking Fund Cases*, 99 U. S. 721; 25 L. Ed. 502.

CONTRACTS—ILLEGAL CONDITION—FICTITIOUS SUIT—PUBLIC POLICY.—VAN HORN V. KITTITAS COUNTY, 112 FED. 1 (WASH.)—A county agreed to sell an issue of its bonds to a bidder on condition that he cause a feigned suit to be brought and prosecuted to the supreme court of the state, to determine the validity of the bonds prior to their issuance. Action against the county to recover damages for breach of this contract. *Held*, on demurrer, that the condition precedent is contrary to public policy, and the contract, being indivisible, void.

Not only is such an attempt to secure a judicial opinion upon a question of law by means of a mere colorable dispute, involving no real controversy, a fraud on the court, but a fair and exhaustive consideration of both sides of a question can rarely, if ever, be had when both parties are united in interest. *Lord v. Veazie*, 8 How. 251; *Smith v. Junction Railroad Co.*, 29 Ind. 546. The distinction between such a suit and an "amicable" suit is sharply defined, the friendliness in the latter consisting only in the manner of the proceedings, not in the absence of substantially conflicting interests. 9 Encycl. Pl. & Prac. pg. 720.

CORPORATIONS—INSOLVENCY—PREFERENCE—DIRECTORS.—SWIFT & CO. V. DYER-VEATCH CO., 62 N. E. 70 (IND.).—The Dyer-Veatch Co., a corporation, becoming insolvent, three of its directors who had become sureties on its notes payable to a bank, mortgaged all the property of the corporation to said bank. *Held*, that the transaction is void in the absence of proof authorizing it on the part of a majority of the directors other than those who were sureties, and that the creditors may question the transaction. Wiley and Henley., J. J., dissenting.

The opinion rendered here and in the recent case of *Nappannee Canning Co. v. Reid Murdock & Co.*, 60 N. E. 1068, rejects the principles which have governed the Supreme Courts of nearly all States and the U. S. Supreme Court. *Sanford F. & T. Co. v. Howe, Brown & Co.*, 157 U. S. 312. The weight of authority sustains an assignment by an insolvent corporation for the benefit of creditors even if directors, provided only the debts are bona fide: but *cf. Manufacturing Co. v. Hutchinson*, 63 Fed. 96. It was held in the *Canning Co.* case, that a majority of the directors must be disinterested. But this does not seem to be good law.

CREDITORS—PREFERRED INTEREST ON CLAIM—PEOPLE V. AMERICAN LOAN & TRUST CO., 73 N. Y. SUPP. 584.—After dissolution of defendant company, preferred creditors, who had previously been receiving interest at less than the legal rate, were paid the principal of their claims. They claimed interest at the legal rate from time of dissolution to settlement. *Held*, that they were entitled to the legal rate of interest even though unpreferred creditors were thereby deprived of the principal of their claims.

This case is unusual in that the preferred creditors had been receiving interest at less than the legal rate. It was decided (*In re Fay*, 6 Miss. Rep. 462) that where

preferred creditors had been receiving no interest they were entitled to interest from time of dissolution to time of settlement, in order of preference, although other creditors were thereby entirely cut off. See also *Upton v. Bank,* 13 Hun. 269.

DAMAGES—TELEGRAM—FAILURE TO DELIVER.—BUTLER V. WESTERN UNION TELEGRAPH CO., 40 S. E. Rep. 162 (S. C.).—This is an action brought against the defendant for failure to deliver a telegram sent to a third person for plaintiff's benefit. *Held,* where a telegraph company failed to deliver a telegram sent by the son of plaintiff to a third person for benefit of plaintiff, the latter has a right of action.

Where an agent without disclosing the name of his principal makes a contract with a common carrier to transport the property of principal, the latter may maintain an action in his own name against the carrier to recover damages for the loss of the property. *Elkins v. Boston & Maine R. R. Co.,* 19 N. H. 337.

DIVORCE—JURISDICTION—DOMICILE OF DEFENDANT.—WALLACE V. WALLACE, 50 ATL. REP. 788 (N. J.).—Complainant, deserted in one State moving into another State for the purpose of securing a divorce in such State, acquired no domicile sufficient to give the courts of such State jurisdiction, when no service is had on the defendant in such State.

This point was not decided in the recent Supreme Court decisions on this subject, *181 U. S. 155-187,* although the decision is a natural sequence of those cases. The difficulty arises as to when, under such circumstances as above stated, the domicile relied upon is matrimonial. This case lays down the rule that "necessity" alone is the true ground for jurisdiction in such cases, as suggested in *Bree v. Bree,* 181 U. S. 175, and *Atherton v. Atherton,* 181 U. S. 155. Many western jurisdictions have, of course, taken the opposite view, but this seems to present a just solution of the jurisdiction problem in such cases.

ELECTION OF OFFICERS—CITY COUNCIL—QUORUM—REFUSAL TO VOTE.—SCHMULBACH ET AL. V. SPEIDEL ET AL., 40 S. E. REP. 424 (W. VA.).—The defendants had been elected as members of the board of public works, and had taken forcible possession of the office and books. The plaintiffs, alleging illegality of election, petitioned the court to compel defendants to restore the office and books to them. *Held,* that a quorum of the city council being secured, though by unlawful means, and a majority of those present voting for the persons elected, the election is valid.

Although a quorum was obtained by the aid of the police, yet the session was a legal one, and its acts were valid. The right to compel attendance of absent members is the recognized power of every lawfully organized legislative assembly. *Cush. Law & Prac. Leg. Assem.* 3264.

EQUITY—MORTGAGE FORECLOSURE—SALE TO EXECUTOR AS MORTGAGEE.—FLEMING V. MCCUTCHEON, 88 N. W. 433 (MINN.).—Defendant, owner of a real estate mortgage, was appointed administrator of estate of mortgagor. While administrator he foreclosed the mortgage, purchased the property at the sale, and subsequently sold same at a profit. Action by the heirs-at-law to recover this profit. *Held,* that the administrator had a legal and equitable right to foreclose and purchase, and was not liable for the profits in the transaction. Brown, J., *dissenting.*

This case seems somewhat at variance with the general equitable rule that one standing in a fiduciary relation purchasing at his own sale will be charged as constructive trustee at election of cestui que trust. *Yost v. Crombie,* 8 U. C. C. P.